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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in the organization, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

The Corporation Journal Index

MANY readers of The Corporation Journal preserve back numbers for reference purposes. To these readers the index which is issued each year proves of great value.

An index covering the first half of Volume IV—May, 1919, to April, 1920—is being mailed herewith to each of our subscribers who has a Journal binder. A small additional supply of this index has been printed, and copies will be sent upon request so long as they remain available.

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Federal Reserve Act Service—Reports the Federal Reserve Act and the official regulations, etc., bearing thereon.

Federal Trade Commission Service—Reports the Federal Trade Commission Act and the Federal Anti-Trust Act (the Clayton Act) and the official orders, rulings, complaints, etc., bearing thereon.

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Talks on Foreign Corporations

No. 3: Interstate Commerce and Intrastate Commerce

(Selling goods through traveling salesmen.)

The selling of goods through traveling salesmen who solicit orders in the state by the use of samples or otherwise, sending the orders for acceptance to the home office of the company, outside of the state, the shipment of the goods being made directly to the customer, constitutes interstate commerce and a corporation thus conducting its "foreign" business is free from the requirements of taking out a license in the foreign state or the payment of taxes therein with reference to the privilege of doing business.

The statutes of all the states are so construed as to exempt a foreign corporation whose method of doing business in the state is confined to the soliciting of orders through traveling salesmen or "drummers".

Missouri has emphasized this exemption by the statement that the restrictions imposed by its statutes, "are not intended to and shall not apply to 'drummers' or traveling salesmen soliciting orders in this State for foreign corporations which are entirely non-resident." (Section 3039, R. S. 1909.)

This generally accepted rule is found declared in a large number of cases, among which are *Kirven v. Virginia-Carolina Chemical Company*, 145 Fed. 288; *Aultman v. Holder*, 68 Fed. 467, affirmed in 169 U. S. 81; *Herman Bros. Co. v. Nasiacos*, 46 Colo. 208; *Lehigh Portland Cement Company v. McLean*, 245 Ill. 326; *Brener v. Kansas etc. Co.* 168 Fed. 218; *Mutual Manufacturing Co. v. Alspaugh* 174 Ind. 381; *Belle City etc. Co. v. Frizzell*, 11 Idaho 1; *Barnhard Bros. v. Morrison* 87 S. W. 376; *Rock Island etc. Co. v. Peterson*, 93 Minn. 356; *Elliott v. Parlin etc.* 71 Kan. 665.

The foregoing decisions, however, are confined in their application and are said in *Bondurant v. Dahnke-Walker Milling Co.* 175 Ky. 774, 195 S. W. 139 to "rest upon the theory that orders taken for goods by traveling salesmen in the employ of foreign corporations do not constitute the contract itself, and that the contract has existence only from the time of the confirmation of the order."

In a Michigan case (*Despres Bridges etc. v. Zierleyn*, 163 Mich.

399) it is held that a traveling salesman who displays, sells, and himself delivers goods within the State brings his foreign corporation within the rule of "doing business". Failure to qualify as a foreign corporation in this case resulted in legal disability to collect for goods sold.

In Minnesota it has been held that where the goods were sent to the traveling salesman himself for delivery by him to the customer the corporation was "doing business" in the State. It should have qualified as a foreign corporation. *Sherman etc. Co. v. Aughenbaugh*, 93 Minn. 201.

It has been held that where goods are shipped by a foreign corporation into the state, not in response to an order from the purchaser, but to be held in stock by the agent, and thereafter sold and delivered by him, the corporation is not engaged in interstate commerce, but is subject to the foreign corporation laws. *Bailey v. Peary Manufacturing Company (Okla.)* 158 Pac. 581.

The consigning of goods f. o. b. at the plant of the corporation outside of Colorado appears to have had weight in deciding that the corporation which had sold the goods in Colorado through a traveling salesman was not "doing business" therein so as to require qualification. *International Trust Company v. A. Lescher & Sons Rope Company*, 41 Colo. 299.

The fact that traveling salesmen sometimes fill orders by purchasing articles from a company within the State, did not take the foreign corporation out of the rule that qualification was unnecessary. *Frank Prox Co., v. Bryan*, 185 Ill. App. 322. A listing of an office in the State as headquarters for salesmen, the rent being charged to the salesmen themselves, was not sufficient to make it necessary for the foreign corporation to qualify. *American Art Works v. Chicago Picture Frame Works*, 184 Ill. App. 502.

Where goods were brought within the State by traveling salesmen and displayed and directly sold for the account of the foreign corporation, it was held that the foreign corporation was "doing business". *Union Cloak & Suit Co. v. Carpenter*, 102 Ill. App. 339.

Contracts sometimes expressly stipulate that they are subject to the approval of the home office in another state. This practice assists in coming to the conclusion that the foreign corporation is not "doing business" in the state where the order has been taken by traveling salesmen. *Low v. Davy*, 83, N. J. Law 540.

We expect in our next talk on foreign corporations to discuss the maintenance of an office in a state as "doing business" in such manner as to require qualification.

Domestic Corporations.

In General.

Jurisdiction of United States Courts in Stockholders' Suits. A corporation incorporated in one state cannot be compelled to answer to a civil suit, at law or in equity, in a District Court of the United States held in another state, such other state not being the residence of the plaintiff, even if the corporation has a usual place of business in the latter state. In a stockholders' suit to require individuals to account to the corporation for money alleged to have been diverted from the corporation, the corporation is an indispensable party. *M'Neely v. E. I. Du Pont De Nemours Powder Co.*, 263 Fed. 252.

California.

Liability of Directors for Improper Dividends. Under Section 309 of the Civil Code directors are personally liable to the corporation and to the creditors thereof, to the full amount of capital stock paid out as dividends, except from surplus profits arising from the business. They will not be "exonerated by merely testifying they were mistaken and they believed that there were surplus profits, because they had accepted the figures of a balance sheet prepared by the corporate employees." *Southern California Home Builders v. Young*, 188 Pac. 586.

Definition of "Surplus Profits" from which Dividends May Be Paid. Excess of receipts over expenditures is necessary to constitute net earnings, from which dividends may properly be paid. "Mere advance in value of property prior to its sale, or estimated profits on partially executed contracts, do not constitute profits, because the fluctuations of the market and the uncertainty of the completion of such contracts may bring about a condition such as was found to exist in the present case, where the estimated profits were in fact liabilities or direct losses." *Southern California Home Builders v. Young*, 188 Pac. 586.

Colorado.

Issue of Corporate Bonds to Lessen Value of Stock. B. wished to purchase one-half interest in a corporation but was unable to raise the requisite \$50,000. It was determined by vote of all the stockholders to issue \$40,000 in bonds secured by deed of trust thus reducing the value of the total capital stock from \$100,000 to \$60,000. Fifty per cent. of the stock was then issued to B., the remaining fifty per cent. being held by F. L. and C. L. The bonds were issued ten each to F. L. and C. L. and twenty to B., F. L. and C. L. each paying \$2,000

to the company, and B. paying \$4,000. Action was brought against the corporation by the original stockholders to foreclose the mortgage, and the corporation defended on the ground that the bonds had been issued without consideration and were invalid. The Supreme Court of Colorado in affirming a judgment below in favor of plaintiffs, says:

"Under these circumstances it may well be held that the bonds were sold at approximately par value, in so far as the corporation itself is concerned, and it follows inevitably that the claim that the bonds were issued without consideration has no support at all in fact."

The Court continues by pointing out that in the absence of fraud upon creditors a solvent corporation may, by unanimous consent of its stockholders, make any disposition of the corporate assets which may appear advisable, and the stockholders, their transferees and the corporation itself are bound thereby. *Pueblo Foundry & Machine Co. v. Lannon*, 187 Pac. 1031.

Delaware.

Fully Paid Stock May Not be Issued for Services to be Rendered, but Stock May be Issued Before Fully Paid For. The Court of Chancery says: "Services to be rendered cannot be a valid consideration for the issuance of full paid, non-assessable shares of stock, for these can be issued only for 'labor done,' *i. e.*, after it has been done. This does not mean that shares may not be issued for services to be rendered so long as they are not marked fully paid until that condition has been fulfilled by rendering the services. By the statute shares may be issued before paid for, and will be subject to assessment either by the corporation or for the benefit of creditors, up to the par value thereof, and this statute is not necessarily inconsistent with the Constitution." *Scully v. Automobile Finance Co.*, 109 Atl. 49.

A Mere Business Idea is Not a Valid Consideration for Issuance of Stock. The Court of Chancery repeats its holding on demurrer reported in *The Corporation Journal* for October, 1917, page 74, 101 Atl. 908, to the effect that a plan for carrying on business is not property and will not sustain an issue of stock. The Court says: "The plan of business was an application to automobiles having possession under a prospective purchasers of property are assisted to buy and pay for the same and acquire title thereto, the company making the purchase and holding title until the whole of the purchase money is paid, in installments or otherwise, the customer in the meantime having possession under a form of bailment or lease. It was substantially the same as the Morris plan of banking. It was without novelty, had no element of property, was not assignable and could not in any fair sense be 'acquired' by the company. Neither was it labor done, nor services rendered. It did not, therefore, constitute a valid consideration." *Scully v. Automobile Finance Co.*, 109 Atl. 49.

Georgia.

Statement on Certain Stock Certificates Inadequate to Give Notice of a Lien Thereon of Issuing Corporation. The by-laws of a corporation purported to create a lien on its stock and to justify the corporation in refusing to transfer the stock unless all indebtedness of the record holder was first paid to the corporation. It was unsuccessfully contended before the Court of Appeals of Georgia that notice of this lien should be imported by the statement on the stock certificate that it was "transferable only on the books of the corporation in person or by attorney on surrender of this certificate, in accordance with the by-laws of this bank." The court holds that this language does not remotely suggest to a purchaser, or in any wise put him on notice, that the absolute ownership of the shares certified to by the corporation is to be limited by a lien thereon. *Citizens' Bank v. Bank of Penfield*, 101 S. E. 203.

Maryland.

Liability of Majority Stockholders to Account for Profits Obtained by Deception. Directors owning a majority of the stock of a corporation by misrepresentation induced minority stockholders to transfer and deliver to them individually for their own use and benefit certain shares of the common stock of the corporation. The Court of Appeals of Maryland affirms an order overruling a demurrer to a bill brought to compel the return of the stock and for an accounting. *MacGill v. MacGill*, 109 Atl. 72.

Amendments to Corporation Law. By Chapter 545, Laws of 1920, approved April 9, 1920, and in effect June 1, 1920, the corporation law of Maryland is amended substantially as follows:

Section 10 relating to powers of directors has had provisions added thereto, to the effect that the by-laws may fix or authorize the board of directors to fix the number of members of the Executive Committee and also provide that during the absence of a member of the Executive Committee the remaining members may appoint a member of the Board of Directors to act in his place.

Other amendments are made relating to provisions which may be inserted in the by-laws.

Section 34A relating to non-par value shares has been amended to permit the issuance of one or more classes of such shares with such preferences, voting powers, restrictions, etc., as may be stated in the charter. Non-par value shares may be created subject to redemption.

New sections are enacted providing for the insertion of conversion privileges of one class of stock into another class of stock in the certificate of incorporation, providing for the considerations for which non-par value stock may be issued and making various other amendments.

Michigan.

Disregarding the Corporate Fiction. In controversy arising between two tenants in common of real estate, who had created a corporation for handling the common property, with equal division of stock and of directors between them, a United States Circuit Court of Appeals holds that the corporate form may properly be disregarded in a court of equity and the matter determined with reference only to the individual rights of the parties. In reversing the decision of the District Court, the Court rests its finding on the broad ground that the complainants may not "deny their own trust obligation and at the same time enforce that of their fellow directors." *Cleveland-Cliffe Iron Co. v. Artic Iron Co.*, 261 Fed. 15.

New Jersey.

Authority of Sales Agent. The sales agent of a corporation, as such, has no authority to modify the terms of contract made by the corporation. In the earlier case of *Mauset v. Feigenspan*, 68 N. J. Eq. 671, it was held that even the president of a corporation had no power by virtue of his office as president to alter the provisions of a written agreement entered into by the corporation itself. *E. Clemens Horst v. Peter Breidt City Brewery*, 109 Atl. 727.

New York.

Amendments of Non-Par Value Laws. Chapter 608 of the Laws of 1920, which was approved May 10, amends Section 19 of the Stock Corporation Law with respect to the issuance of shares without par value by eliminating therefrom the words "or to some multiple of Five Dollars." By the elimination of these words, the stated capital of a corporation having shares without par value should now be the amount of the preferred stock plus a sum equivalent to at least \$5 for every share without par value.

Chapter 606, which was also approved May 10, amends Section 20 of the Stock Corporation Law referring to the issuance of shares without par value by eliminating the provision requiring all of the stated capital to be paid in before the corporation commences business or incurs debts. In place of the former provision, the act now provides as follows:

"No corporation authorized to issue shares without nominal or par value shall, until its stated capital shall have been fully paid in, incur any debts in excess of the amount of capital paid in at the time such debts are contracted. In case of an increase of stated capital, such increase of stated capital shall be deemed paid in to the extent of the amount of the assets which the corporation has in money and property in excess of the former stated capital."

Right to Rescind Purchase of Stock Because it was Not Listed on Exchange. A purchaser of stock who kept silent for more than six months after discovering that the stock was not listed on the exchange as represented, could not thereafter rescind the contract and recover the purchase price on the ground of misrepresentation. *Sarantides v. Williams, Belmont & Co.*, 180 N. Y. Supp. 741.

Conduct of Business of a Corporation by Sole Stockholders in Individual Names. The fact that two stockholders holding substantially all of the shares of stock in equal portions have transacted the business of the corporation in their individual names did not make them co-partners. *Morrison v. Griffin Corners Water Co.*, 190 N. Y., App. Div. 45.

Services by Corporation in Procuring Reduction of Assessment for Taxation. Services performed by a corporation in the examination and appraisal of property and in the preparation and filing of suggestions with the commissioners of taxes and assessments, and of applications for the reduction of assessments, did not constitute "practice of law" in violation of the Penal Law. *Tanenbaum v. Higgins*, 180 N. Y. Supp. 738.

Right of Stockholder to Verified Statement of Assets and Liabilities. In an action brought under Section 69 of the Stock Corporation Law by a stockholder owning more than 5% of the capital stock against the treasurer of a domestic corporation, to recover the statutory penalty because of defendant's failure to deliver to plaintiff a verified statement of the corporate assets and liabilities, pursuant to a written demand duly served on the defendant, it was no defense that the plaintiff was himself a director, or that he was engaged in a competing business. The Court says: "Since Stock Corporation Law, paragraph 69, like Stock Corporation Law paragraph 33, confers on the stockholder an absolute right to recover the penalty, the defendant's contention herein that plaintiff, in seeking to enforce his absolute right, is proceeding from an improper motive constitutes no defense to the action for the recovery of the penalty. Nor is it a defense that plaintiff is a director of the corporation and had daily access to its books and records." *Klingenschmidt v. Martocci*, 178 N. Y. Supp. 673.

Amendment of Certificate of Incorporation. In dismissing a complaint brought for an injunction to restrain the issue of convertible bonds of defendant corporation, and to restrain the conversion thereof into capital stock, the Court says that an amended certificate of incorporation providing for an increase of the capital stock not to exceed a certain amount did not preclude an increase in excess of that amount by further amendment which was assented to by a vote of all the stockholders. The Court says further that a provision in the earlier certificate that existing stockholders should have a preferred right to subscribe to any increase at any time within 60 days from the time when such new stock should be offered for subscription applied only to

(Continued on page 192.)

The importance of qualifying before doing business

EVERY foreign corporation must obtain proper authority to do business in each state into which it will extend its operations. The penalty for failure to obtain such authority is generally severe—often disastrous. It may disable the corporation to enforce its contracts in the courts, may subject it to heavy money penalties, or may make its officers or agents personally liable on contracts.

The procedure to obtain authority differs in every state. Send us the names of the states in which your clients propose to operate as a corporation and we shall gladly furnish you with detailed information regarding requirements and taxes.

How we assist attorneys to obtain a license for foreign corporations

Without charge, The Corporation Trust Company furnishes to attorneys a synopsis of foreign corporation laws, a citation of cases in point as to what constitutes "doing business" by corporations so as to require qualification, an estimate of the cost of qualifying and of the annual state taxation, including an estimate of fees to be charged for the service hereinafter outlined.

Upon being retained to furnish its foreign corporation service, The Corporation Trust Company drafts for approval and submits to the attorney for the corporation all papers necessary to secure permission to transact business in any state, territory or possession of the United States or in Canada. It furnishes the agent, statutory office or other representation necessary to be named in such qualifying documents. Upon approval of their form and contents by the attorney it files these documents with the proper officials, securing formal permission or authorization and forwards the same to the attorney.

After qualification

For an annual fee chargeable against the corporation, and resulting in no cost to the attorney or reduction in his fees, The Corporation Trust Company continues to furnish the agent, statutory office or other representation required in order to avoid forfeiture of the right to do business. It notifies the attorney of all state reports which must be filed, and taxes which must be paid, to keep the license valid. It forwards to the attorney all reports, tax blanks, and process or other documents which may be served upon the local agent, giving telegraphic advice whenever necessary.

Further information may be obtained by attorneys from our nearest office.

**The Corporation Trust Company
and Affiliated Companies**

issue of stock up to the limited amount then contemplated, and did not govern the issue of additional stock under the later amendment. *Venner v. American Telephone & Telegraph Co.*, 181 N. Y. Supp. 45.

Amendments of Law with Relation to Right to Convert Bonds into Stock. By Chapter 607, Laws of 1920, approved and in effect on May 10, 1920, section 6 of the Stock Corporation Law is amended so as to provide that in the issuance of convertible bonds in the case of a mortgage other than a purchase money mortgage the consent of two-thirds of the total number of shares issued and outstanding must be obtained in companies having shares without par value. It is further provided that the right to convert the principal of the bonds into stock may be exercised "within such period as may be fixed by the resolution of the directors conferring the right of conversion." Formerly such conversion could be made only after two and not more than twelve years from the date of such bonds. Certain changes are made in the procedure to be followed in case an increase in capital stock is necessary to take care of such conversion. Special provisions are enacted with respect to such increase in the case of a company having non-par value stock.

Amendments to Law Relating to Sale of Corporate Franchises and Property. By Chapter 396, Laws of 1920, approved and in effect on April 28, 1920, Section 16 of the Stock Corporation Law has been amended so that property of a New York corporation outside the State of New York may now be sold with the consent of two-thirds of the stock, to a foreign corporation, whether incorporated under the laws of an adjoining state or not. Heretofore a New York corporation with the consent of the holders of two-thirds of its stock might sell its property, franchises, etc., to another domestic corporation and might with consent of ninety-five (95%) of its stock, sell its property without the state to a foreign corporation organized under the laws of an adjoining state.

Right of Pledgee to Vote at a Meeting of Bondholders. On application by the trustee under a deed of trust for instructions as to the course to be pursued at a meeting of bondholders, the District Court for the Southern District of New York holds that pledgees of bonds pledged by a corporation to secure its own debts were entitled to vote thereon as "bondholders" under the terms of the deed of trust. *Heath v. Port of Para*, 262 Fed. 815.

Ohio.

Amendment of Non-Par Value Law. By an act of the recent Legislature, approved February 20, 1920, and in effect May 21, 1920, a number of changes have been made in the non-par value law of Ohio. Common stock without par value may be divided into classes having such designations and voting power or restrictions or qualifications as shall be stated. At no time shall the number of shares of preferred stock

outstanding be more than two-thirds of the total number of shares, common and preferred, outstanding. At the time of opening the books of subscription, subscriptions may be received for such consideration as may be decided upon by a majority of the incorporators; thereafter shares may be issued for the market value as fixed by the board of directors, or for such consideration as shall be consented to in writing by the holders of all of the outstanding shares of common stock, or for such consideration as shall be fixed by vote of a majority in number of the outstanding common shares at a meeting called for that purpose. No corporation having shares without par value shall declare or pay any dividends except from surplus profits arising from its business.

Changes in the law are also made providing for reorganization of existing corporations so as to have non-par value shares.

Texas.

Contract for Commission on Sale of Capital Stock is Valid. Agreement by a corporation to pay ten per cent. commission on subscriptions obtained to its capital stock is valid. *Thannish v. Brewton Transfer & Auto Co.*, 220 S. W. 300.

Combination in Restraint of Trade. A contract by a corporation granting an exclusive right to sell its product in a certain county, in consideration of a fixed price and in such quantities as required, was a contract of sale, not of agency, and was an illegal restraint of trade under Rev. St. 1911, Art. 7798. *American Brewing Association v. Woods*, 215 S. W. 448.

West Virginia.

Valid Service of Notice Upon a Process Agent who had Removed to Another County—Advisability of Corporation Keeping Track of Agents and Making New Appointments—Advantages of The Corporation Trust Company's System. Where a question arose as to the validity of a service of notice to take depositions under Section 24, c. 54, Code 1913 (Sec. 2917), providing for the appointment of "some person resident in the county * * * where its (corporate) business is conducted * * * upon whom service may be had of any process or notice," the Supreme Court of Appeals sustains a service of notice upon a duly appointed attorney in fact, though such service was made in a county where the corporation did not maintain an office or transact its business. In the opinion of the court the attorney in fact continued to represent the corporation even after his removal to another county, and until the appointment of his successor, in a de facto, if not a de jure, capacity. The Court says:

"The statute contemplates no hiatus or gap between appointments, and if the corporation desires to protect itself against the service of process or notice upon a distant attorney in fact, it should comply with the requirements of the statute and make a new appointment. Upon its failure to pursue that course it cannot be heard to complain that a plaintiff who desires to institute suit against it, but is unable to find any of its officers or a properly appointed representative residing in the county in which its business is conducted upon whom to serve process, adopts the only course remaining to it, and has process served upon the person last designated as attorney in fact." *G. Elias & Bro. v. Boone Timber Co.*, 102 S. E. 488.

The corporation service furnished by The Corporation Trust Company System affords to attorneys the safest and surest means of avoiding the "hiatus or gap between appointments" of agents for the service of process. Complete information in regard to this service may be had by members of the bar at any of our offices.

Amendment of Corporation Law so as to Permit Issuance of Non-Par Value Stock. By an act approved March 11, 1920, certain sections of the Corporation Law of West Virginia are amended so as to permit the issuance of non-par value stock and to fix the basis of the tax on such stock. The law as amended requires that for the purpose of assessing the license tax to be paid by domestic and foreign corporations, non-par value shares shall be presumed to have a par value of \$25.00; provided that, if such shares were originally issued for a consideration greater than \$25 per share, the tax shall be computed on the basis of the consideration for which the stock was issued. Sections of the Code are amended so as to make provisions for non-par value stock, with reference to the issuance of such stock and its payment and to provide that in the case of a corporation having such stock at least \$500 shall be paid in good faith before the certificate of incorporation shall be issued and to provide for the issuance of non-par value shares by existing corporations.

Foreign Corporations.

Iowa.

Contract of Subscription for Less than Par Value of Shares cannot be enforced in Iowa by a qualified foreign corporation. The permit to do business by a foreign corporation in this State contains a proviso that the company shall be subject "to all the provisions of the statutes of Iowa relating to organizations for pecuniary profit." The State Supreme Court holds that this makes a foreign corporation amenable to Sections 164lb, 164ld, 164lf, prohibiting the issuance of stock until the corporation has received the par thereof. A subscription contract to pay less than par is therefore void and unenforceable. *Traup v. Marquesen*, 176 N. W. 977.

Kentucky.

Contract may be Enforced Against an Unqualified Foreign Corporation, but Not by It. Those whose lands are embraced in a drainage district cannot attack a contract between the district and an unqualified foreign corporation. Failure to qualify merely renders such a contract void at the option of the other party, who may enforce it if he sees fit. *Yewell v. Board of Drainage Com'rs*, 219 S. W. 1049.

Massachusetts.

New Law Provides for Abatement of Corporation Excise Taxes in Excess of \$2,000. Chapter 462 of the Laws of 1920 passed by the Legislature of Massachusetts, provides that any foreign corporation which has, after the first day of July, 1914, paid an excise tax for any one year or years in excess of \$2,000 shall be entitled to an abatement in full of all such excess payments. This act becomes effective ninety days after May 14, 1920, the date upon which the act was approved. In order to obtain the abatement, an application therefor shall be filed with the Commissioner of Corporations and Taxation, within sixty days from the date upon which the act takes effect. No printed forms for applications for abatement have been prepared. This act applies only to corporations having an authorized capital stock over \$10,000,000, as only such companies were required to pay a tax in excess of \$2,000.

Michigan.

What constitutes "doing business" by a moving picture company. Contracts void but noncomplying Foreign Corporation may replevin its property in the State. The Rex Beach Pictures Company, a Maine corporation, as the owner of the picture known as "The Barrier," made a contract with the Selznick Company, a New York corporation, for distribution of the picture. The Selznick Company, as agent for and with the express consent of the Rex Beach Company employed Garson Productions, Inc., a Michigan corporation, as the Michigan agent for the picture. The sole purpose of this agreement, according to the Supreme Court of Michigan, was to create an agency or means whereby the Rex Beach Company, a foreign corporation, "in the conduct of ordinary business, was to derive a continued revenue from the exhibition of its motion picture (of which it always and at all times remained the absolute owner) to audiences assembled in different Michigan theatres, and from revenues so derived to receive as its share of the income produced by such acts performed in Michigan 80 per cent of the gross receipts, income and revenue." The court holds that the Rex Beach Company was carrying on business in Michigan in a sense that required its securing authority to do business therein as a foreign corporation. Although this subjected the corporation to the penalties provided by statute (Compiled Laws 1915, sections 9063, 9067, 9068),

the company could maintain an action of replevin to recover its films. On this point the court says: "The authorities are uniform in holding that replevin is a personal action *ex delicto* brought to recover goods unlawfully taken or detained. Unless the statute says so, the non-compliance by a foreign corporation with the terms and conditions upon which the domestic law allows it to enter the state and do business will not preclude it, or any one claiming through it, from maintaining an action which is purely *ex delicto*. We have no doubt that under the provisions of our statute, above referred to it was unlawful for the plaintiff to carry on its business in this state; and it was incapable of making a valid contract for such purpose until it had complied with the requirements of the statute. A penalty is provided for the violation of these provisions, and in our opinion, the contract was void, and against the settled policy of this state." The court reviews cases holding that a non-complying foreign corporation may not recover from its agents money collected under its contracts with them. Nevertheless it holds that such a corporation is entitled to recover its property, in this case the films in possession of its agent. *Rex Beach Pictures Co. v. Harry I. Garson Productions*, 177 N. W. 254.

Taxation.

The National Tax Association will hold its annual conference this year at Salt Lake City, Utah, the week beginning September 6. The declared object of this association is: "To formulate and announce, through the deliberately expressed opinion of an Annual Conference, the best informed economic thought and administrative experience available for the correct guidance of public opinion, legislative and administrative action on all questions pertaining to taxation and to interstate and international comity in taxation." Annual membership dues in the Association, including the current volume of proceedings and one year's subscription to "The Bulletin," published monthly, except in July, August and September, are \$5. Inquiries in regard to membership should be addressed to A. E. Holcomb, Secretary and Treasurer, 195 Broadway, New York, N. Y.

The United States Supreme Court, on June 1, 1920, in *Evans vs. Gore*, held the Revenue Act of 1918 to be unconstitutional to the extent that it provided that the salaries of United States judges and the President should be included by them, respectively in their gross taxable income.

The Revenue Act of 1918 was not amended and no additional taxes were imposed by Congress during the session which ended June 5, 1920. The several tax measures pending at adjournment retain their then status on the reassembling of Congress on December 6.

Some Important Reports for June and July

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. The State Report and Tax Service maintained by The Corporation Trust Company System sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information regarding forms, practice and rulings.

ARIZONA—Report to Corporation Commission and Registration fee during June—Domestic and foreign corporations.

ARKANSAS—Anti-Trust Affidavit due on or before August 1—Domestic and foreign corporations.

CALIFORNIA—Corporation Franchise Tax due on or before first Monday in July—Domestic and foreign corporations.

CONNECTICUT—Income Tax due on or before August 1—Domestic and foreign corporations.

DELAWARE—Annual Franchise Tax due between third Tuesday in March and July 1—Domestic corporations.

IDAHO—Annual Statement due between July 1 and September 1—Domestic and foreign corporations.

Annual License Tax due between July 1 and September 1—Domestic and foreign corporations.

ILLINOIS—Annual License Fee or Franchise Tax due July 1 but may be paid up to July 31 without penalty—Domestic and foreign corporations.

INDIANA—Annual Report between June 1 and July 31—Domestic corporations.

Annual Report and License Fee to Industrial Board due between July 1 and July 31—Domestic and foreign corporations employing five or more persons in any capacity.

IOWA—Annual Report due between the first day of July and the first day of August—Domestic and foreign corporations.

Additional Statement due at the time of making the Annual Report in July—Foreign corporations.

MISSISSIPPI—Annual Report to Factory Inspector due during July—Domestic and foreign corporations.

MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July—Domestic and foreign corporations.

NEBRASKA—Annual Report and Fee during July—Foreign corporations.

Annual Report and Fee due on or before July 1—Domestic corporations.

NEW JERSEY—Franchise Tax due on or before first Monday in July—Domestic corporations.

NEW YORK—Annual Return of Net Income on or before July 1—Domestic and foreign business corporations.

NORTH CAROLINA—Capital Stock Report to Determine Amount of Franchise Tax during July—Foreign corporations. Capital Stock Report due between May 1 and July 1—Domestic corporations.

NORTH DAKOTA—Corporation Report due during July—Domestic and foreign corporations.

Annual Report due on or before July 1—Domestic and foreign corporations. NOTE: This Report has been consolidated with the Annual Excise Tax Return filed on or before March 1, and is therefore not required this year.

Annual Income Tax due between June 1 and July 15—Domestic and foreign corporations.

OHIO—Annual Report due during July—Foreign corporations.

OKLAHOMA—Annual License Tax Report due on or before July 31—Domestic and foreign corporations.

Annual Capital Stock Affidavit due between July 1 and August 1—Foreign corporations.

OREGON—Annual Statement during June and on or before July 1—Domestic and foreign corporations.

Power of Attorney during June and on or before July 1—Domestic mining companies whose president does not reside in the State.

Annual License Fee due within 30 days after July 15—Domestic corporations.

License Fee due between July 1 and August 15—Foreign corporations.

RHODE ISLAND—Corporate Excess Tax due on or before first day of July—Domestic and foreign corporations.

TENNESSEE—Annual Report and Franchise Tax on or before July 1—Domestic and foreign corporations.

UNITED STATES—Second Installment Income and Excess-Profits Taxes due June 15—Domestic and foreign corporations (calendar year basis.)

Annual Capital Stock Return due during July (tax payable within ten days after notice and demand)—Domestic and foreign corporations.

WASHINGTON—License Tax on or before July 1—Domestic and foreign corporations.

WEST VIRGINIA—Tax Statement due on or before July 1—Domestic corporations.

Annual License Tax due on or before July 1—Domestic and foreign corporations.

Fee to State Auditor as Attorney in Fact due on or before June 30—Foreign and non-resident domestic corporations.

Publications

The following publications may be obtained without charge from the nearest office of The Corporation Trust Company System:

Revenue Act of 1918 is the title of our pamphlet, which contains a complete copy of the text of the Federal tax law, approved by the President February 24, 1919.

New York Income Tax Laws as Amended.—Full text of the personal income tax law and of the corporation "income tax" law.

Issuance, Transfer and Registration of Corporate Stock is the title of a pamphlet printed to supply the demand for information on these subjects.

Business Corporations Under the Laws of Delaware is the title of a pamphlet containing the advantages of the law, statutory requirements and forms including a description of shares without par value. The General Corporation Laws are published in a separate booklet.

Important Changes in the Corporation Laws of New Jersey. Special Corporation Journal No. 97 contains a reprint of the laws approved by the Governor of New Jersey on April 9 and 15, 1920, including repeal of the last of the so-called "seven sisters" laws.

Illinois General Corporation Act and Securities Law.

Business Corporations Under the Laws of Maine is the title of a pamphlet which contains a description of advantages of incorporation under Maine laws, features of shares without par value, statutory requirements and forms. The text of the statutes relating to business corporations is also available in a separate pamphlet.

New York Non-Par Value Law, a reprint of Corporation Journal No. 35, contains a copy of The New York non-par value law and a copy of the certificate of incorporation of the Wisconsin Edison Company, the first large company incorporated thereunder.

Extracts from the Statutes of the Various States Relating to the Admission of Foreign Business Corporations may be had by COUNSEL who are interested in the qualification of a particular corporation in a state or group of states. Please advise which state you are interested in. These printed statements show the documents to be filed, fees and taxes to be paid and the statutory penalties for failure to comply in the states under consideration.

Transfer Requirements is the title of a card containing a list of the requirements to be observed in transferring various classes of stock in New York.

Illinois Transfer Requirements contains a list of requirements to be observed in Illinois.

The Corporation Journal

The object of The Corporation Journal is to furnish to corporation attorneys, and others interested, a brief account of current happenings, recent court decisions, new laws, etc. Lengthy discussion is avoided, the purpose being to make the publication a memorandum for the busy attorney upon which he may rely for accuracy and to which he may conveniently refer. Cross references are made to preceding pages and a cumulative

index is issued from time to time. The Corporation Journal is issued monthly except in July and August, and it is sent without charge to those requesting that their names be placed upon the mailing list.

A substantial ring binder will be furnished upon receipt of \$2.00. Copies of The Corporation Journal sent to users of this binder are punched for ready insertion.

Federal Trade Commission Service

FORMAL complaints have been made by the Federal Trade Commission against 601 business concerns because of alleged unfair trade practices, alleged employment of business methods tending to stifle and suppress competition and alleged efforts to create monopolies in restraint of trade.

Over 300 of these complaints have been entered on the Commission's docket during the past twelve months.

A wide range of business activity is covered by those whose methods have been questioned by the Commission. The alphabetical index of businesses engaged in by those against whom complaints have been brought begins with "acetylene gas" and ends with "yeast".

Orders to cease and desist from the practices complained of were served during the year on many of the 601 respondents. The plotting of the boundary lines within whose meets and bounds ambitious business must be conducted, lest the public or competitors suffer, is going on apace. Stakes tentatively driven by the Commission are beginning to be marked as fixed points of record by court survey, or are being shown to be out of line with public policy and public sentiment.*

THE Corporation Trust Company's Federal Trade Commission Service serves as a copy of the draughtsman's map—reflecting day-by-day changes since the establishment of the original base line, and showing the creation of the permanent monuments.

A complete revision of the Service, which was initiated in 1914, has been made. The Docket of Complaints has been thoroughly indexed, and all old matter of continuing interest reprinted. A new and enlarged binder has also been provided.

The contents of the Service are now as follows:

- Conference rulings.
- Docket of complaints showing cause and disposition.
- Index to complaints by names of respondents.

Index to complaints by businesses engaged in by respondents.

Index to complaints by practices complained of.

Laws.

Index to laws.

Procedure before the Commission and other miscellaneous matters.

Court decisions under the Federal Trade Commission Act and the Clayton Act.

The cost of the Service as revised and rearranged, together with continuing report service consisting of current official matters reproduced on sheets of uniform size for insertion in the loose-leaf binder and mailed under first-class postage to May 1, 1921, is \$15.00.

In line with our established policy, we shall be pleased to enter your subscription on an approval basis.

*In *Federal Trade Commission vs. Gratz, et al.*, decided June 7, 1920, the Supreme Court said: "The words 'unfair method of competition' are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine as matter of law what they include."

The Corporation Trust Company
